The CHAIRMAN. This subject is now open for discussion by the members of the society.

Mr. LANSING. I have prepared a brief paper on the question of procedure before an international court, supplemental to this very interesting paper to which we have just listened. It is, of course, a very broad field, and my paper is but a series of suggestions.

PAPER OF MR. ROBERT LANSING, OF WATERTOWN, N. Y.,

on

THE NEED OF REVISION OF PROCEDURE BEFORE INTERNATIONAL COURTS OF ARBITRATION.

Twenty years ago an international arbitration was viewed generally as a mode of compromising differences rather than as a determination of rights in accordance with the principles of strict justice. It was in fact a continuation of negotiations through the aid of a third party and was based upon the idea of mutual concession, in which there was a process of "give and take," the neutral arbitrators adjusting what each party should receive and what it should surrender. However, in the case of monetary claims of a more or less private nature the arbitrators as a rule applied rigidly legal principles, although in some

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championed the scheme of the court. For his writings and addresses, see 2 *American Journal of International Law*, 772; the Reports of the Mohonk Arbitration Conferences since 1907; the Pennsylvania Peace Congress Report, 1908, p. 98; the Chicago Peace Congress Report, 1909, p. 234 (*Some Subjects Likely to be Discussed at the Third Hague Conference*); the New England Peace Congress Report, 1910, p. 83, "Oration on Elihu Burritt," and Dr. Scott's volume of *American Addresses at the Second Hague Conference*, published by Ginn & Company, 1910. See also his article on the International Court of Prize in 5 *American Journal of International Law*, 302, which is closely connected in organization and historical development with the Court of Arbitral Justice; and "The Evolution of a Permanent International Judiciary" in the April, 1912, number of the *American Journal of International Law*.

For the Hague conventions and other action relating to the three courts, already established or projected at The Hague, see 2 James Brown Scott's *The Hague Peace Conferences of 1899 and 1907*, and A. Pearce Higgins' *The Hague Peace Conferences*. Introductory and explanatory matter will be found in 1 Scott's *Hague Peace Conferences*, and in Higgins' invaluable work. See also William I. Hull, *The Two Hague Peace Conferences*, and Thomas J. Lawrence's *Principles of International Law*. Articles on these courts by the present writer are as follows: The Proposed High Court of Nations, *Yale Law Journal*, January, 1910; The International Prize Court and Code, *ibid*, June, 1911; and The Hague Peace System in Operation, *ibid*, November, 1911. The latter article takes up the cases decided by the Permanent Court of Arbitration. The

instances political considerations appear to have affected their awards. Furthermore, in cases involving national rather than private rights arbitration was seldom invoked until diplomacy had hopelessly failed and the controversy had reached a stage which threatened peaceful relations. In such circumstances international arbitration was not unnaturally considered by statesmen as a substitute for war rather than a normal process of peace, and so it was generally treated by publicists.

This idea no longer prevails. A new conception of the province and purpose of arbitration has arisen. It is looked upon today as a usual rather than an unusual means for the settlement of international differences, which do not readily yield to diplomacy. To act justly is the controlling maxim of the new internationalism, which has to such an extent supplanted the selfish nationalism so long the strongest political force in the world, and the inspiration to governments to seek their own advantage with ruthless disregard for the rights of others. To guide its actions by this maxim is the desire and endeavor of an enlightened state.

This changed idea of the motives, which should direct a government in its international relations—an idea, which may be said to be universal among civilized nations—is the new cornerstone of arbitration.

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student of the subject will profit by reading discussions of these courts in the Proceedings of the American Society of International Law for 1908 and 1909. He will also find related topics in the development of international justice, treated in the Procedings of 1910 and 1911; and the latter for a code of international law especially. Valuable and inspiring sources of information and suggestion will be found in the reports of the American Society for Judicial Settlement of International Disputes for 1910 and 1911, in which are papers on the problem of a Court of International Justice, with helpful analogies to the Supreme Court of the United States. See especially the articles or addresses in the report for 1910, by Hon. Elihu Root, Hon. Henry B. Brown, Frederic D. McKenney, Alpheus H. Snow, Professor Eugene Wambaugh, Hon. Jackson H. Ralston, Hon. Andrew J. Montague, Hon. Simeon E. Baldwin, President Charles W. Eliot, and Hon. William Dudley Foulke. Mr. Theodore Marburg wrote a valuable summary of the thought of that conference, which should be consulted in order to get a consensus of American opinion. The pamphlets by this society reproduce some of the addresses already referred to, but "An International Court of Justice the Next Step," by George Grafton Wilson, is newly printed. This is useful as marking the state of temporary thought on the subject.

Other articles referred to in the text are as follows: Compromise, the Great Defect of Arbitration, by Hon. William Cullen Dennis, 11 *Columbia Law Review*, p. 509 (Mr. Dennis thinks that, for the present, a code of procedure in international arbitration is an even more imperative need than a code of substantive law); William Cullen Dennis, 5 *American Journal of International Law*, pp. 59-63; Thomas Raeburn White, The Underlying Principles Which

It removes the proceedings from the sphere of political expediency with its compromises and concessions and places them upon a plane where abstract justice directs the deliberations and moulds the decisions of arbitrators. Naturally this change is, in practice, more or less incomplete. It is difficult for nations, as it is for individuals, to abandon ideas which have been long held and which have become crystallized into usage and custom. Usage and custom are the expressions of ideas, but they may live after the ideas have become obsolete. Yet a change of idea is not complete until its expression in society is abandoned. The surest way of preventing a reversion to an idea, which is discredited, is to cease to follow the usages and customs founded upon it.

It should be recognized that compromise and concession, the useful instruments in diplomatic negotiation, are hostile to the conception of the administration of justice, and that a procedure sufficient for an international compromise may be entirely inadequate for a strictly judicial decision. The definiteness of legal principles and the conclusiveness of evidence are not absolutely essential to an award based upon mutual concessions. The claims of the parties, rather than the rightfulness of such claims, furnish the grounds for an adjustment by compromise. Expediency is uppermost in the minds of compromisers.

Should Govern the Method of Appointing Judges of the International Court of Arbitral Justice, *Mohonk Arbitration Report*, 1911, p. 102; Alpheus Henry Snow, Legal Limitation of Arbitral Tribunals, 60 *University of Pennsylvania Law Review*, December, 1911. This article should be carefully compared with Mr. Snow's article on the Development of the American Doctrine of the Jurisdiction of Courts over States, 1 *Judicial Settlement of International Disputes*, 100.

For discussions of the problems of an international court of justice by delegates of the Hague Conferences, the best original sources are the proceedings which are in French. Brief résumés of these discussions in English will be found in 1 Scott's *Hague Peace Conferences*, Higgins' *Hague Peace Conferences*, and Frederick W. Holls' *The Peace Conference at The Hague*.

For an official discussion of the problem of the relation of the Court of Arbitral Justice to the International Prize Court, see identic circular note by Hon. Philander C. Knox, Secretary of State, in 4 *American Journal of International Law*, p. 102. The combination of these courts in one, which is suggested by the present writer, is also proposed by Secretary Knox, with this difference, however, that the foundation of the plan of the Secretary of State is the International Prize Court, as that institution is already in a more advanced state of acceptance than the Court of Arbitral Justice, while the present writer's scheme makes the Court of Arbitral Justice the foundation. The plans further differ in that the first utilizes the scheme of judges already accepted for cases of prize, which permits nations to have individual representatives on the tribunal, while the second proposes that the judiciary be chosen from the nations at large, none of them to have the right to claim representation by an individual judge.

Positive right is secondary. Thus, when the old idea of arbitration is followed, justice is never fully or completely done. But, when arbitrators attempt to administer justice inflexibly without seeking to confer a measure of satisfaction on the party which is legally in the wrong they require more than the mere claims of the parties to reach a decision. The positions of the parties must be definite and clear and the facts of a case must be established conclusively before the rules of international law can be justly applied.

The present method of procedure before international tribunals is a product of the old conception of the province of arbitration. It is in many ways not adapted to the new conception. One of its chief defects in this particular arises from the dual character which each party occupies. Whatever may be the actual fact, a government is considered to be both complainant and defendant, or neither, except in the case of a pecuniary claim when unavoidably the government demanding damages is compelled to assume the place of complainant. This duality and equality of the character of litigants is a fiction invented by statesmen and maintained by governments with jealous care. It has no foundation in reason or in fact. In an international controversy one government must always be in the attitude of demanding rights, of which it claims that it has been wrongfully deprived. Although unwilling to acknowledge the fact, such a government is necessarily the complainant. So, too, a government which seeks to preserve the *status quo* is a defendant. The one is attacking existing conditions; the other is defending them; their relations as litigants are obvious.

To illustrate the actuality of the relationship between the parties to an arbitration and the certainty with which such relationship can be determined the following examples will suffice.

In the North Atlantic Coast Fisheries case, arbitrated at The Hague in 1910, the dispute was as to the extent of rights secured to American fishermen by Article I of the treaty of 1818 between the United States and Great Britain. These rights were to be exercised in the territorial waters of the British colonies in North America. The British and Colonial Governments, acting upon their own interpretation of the treaty provisions, restricted Americans in the enjoyment of the rights to an extent that called forth protests from the United States. Nevertheless Great Britain and her colonies adhering to their interpretation continued to enforce their restrictive policy. From the

point of view of the United States the conditions resulting were wrong and it sought to change them through the agency of an arbitral award. Evidently the United States was the complainant and Great Britain was the defendant.

In the case of the Alaskan Boundary, decided by the London Tribunal in 1903, although it was not an arbitration in the true sense, there being no neutral arbitrators, the customary procedure was followed. The United States was in possession of certain territory in southeastern Alaska which it had held since its purchase from Russia in 1867. This territory Great Britain claimed was occupied illegally by the United States through an erroneous interpretation of a description of the boundary line between the Russian and British possessions defined by a treaty between the two Powers made in 1825. The existing situation was satisfactory to the United States, but Great Britain desired to change it, so the London tribunal was instituted to examine the evidence and decide whether the line should be changed. Clearly Great Britain in attacking the *status quo* was in the position of complainant.

The Fur Seal Arbitration of 1893 grew out of the seizure by the authorities of the United States of British sealing vessels beyond the usual limit of territorial waters on the assertion of a right of property in the herd of fur-seals frequenting the Pribilof Islands and also of a limited right of jurisdiction over Bering Sea. The British Government complained of the illegality of the seizures and denied the rights asserted by the United States. It is manifest that the United States did not wish to change the existing conditions, so that in the arbitral proceedings, which followed, it was the defendant, while Great Britain seeking to have the United States abandon the rights, which it was enforcing on the high seas, was the complainant.

Yet in none of the cases reviewed was the actual relationship of the parties admitted, nor in the conduct of the arbitrations, which resulted, was the real character of the parties recognized.

This long accepted fiction as to the character of a party to an arbitration is the foundation of the present mode of procedure, by which the parties simultaneously submit their respective cases as complainants and their counter-cases as defendants, producing thus a double set of pleadings and a double record of evidence. From the primary step of submission to the final argument this duality persists, at least theoretically.

Now the normal procedure, when the true relations of the parties are recognized, as they should be if the present conception of arbitration is to prevail, would be for the government which seeks to change existing conditions to submit a case, which the government defending would answer with a counter-case, to which the complainant might reply, and in certain cases the defendant might be entitled to file a supplemental counter-case. Each of these documents would of course be accompanied by the evidence relied upon to support the allegations made.

It is evident that this method of presentation would bring out clearly the points of agreement and points of difference between the parties. It would settle the issues. By doing so as to matters of fact and as to principles of law the labor of a tribunal would be greatly simplified in comparison with the present dual method with its duplication of evidence, its vagueness as to the real differences between the parties, and its waste of time and energy over unimportant questions due to the uncertainty resulting from the confusion of issues. Furthermore, this method of presentation would prevent a government from withholding from its case in chief evidence which should be submitted therewith, for the purpose of producing it in its counter-case at a time when it can not be met with contradictory evidence, a temptation to which all governments are exposed by the present method of submission.

Another consequence of the method now employed would be avoided by the adoption of the procedure suggested. When the testimony of individuals is presented in support of an allegation, there should be opportunity to question the credibility of such witnesses. But with such opportunity there should always be furnished an opportunity to rebut the impeachment. Under the existing practice the impeachment of a witness is unjustifiable, and for the following reason: there are provided for each party two submissions of evidence, one with its case, the other with its counter-case; an attack on the veracity of a witness can only occur in the counter-case, and there is no opportunity after that to meet impeaching evidence with evidence in rebuttal. If the truth of a witness' sworn statements could be questioned by proofs that his reputation for veracity was bad, an entire case might be discredited, if the testimony was vital to it, and the party submitting the statements and relying upon their correctness would be helpless to prevent it. Manifestly this would be unfair and subversive of justice. On the other hand, perjury should not go unchallenged or the testimony of a disreputable person accepted without question.

Impeachment is a legitimate proceeding, from which a party should not in justice be debarred, as it now is because of the absence of opportunity to disprove the impeachment. The consequence is that a premium is put upon falsehood which is necessarily given a value equal to truth. Furthermore, it places upon a party presenting the deposition of a witness, a burden of responsibility for the veracious character of the witness, which ought not to be imposed.

While the new conception of the province of arbitration has received the sanction of the nations of the world and there is a general recognition that changes must necessarily result from its acceptance, one cannot close his eyes to the difficulties which stand in the way of revising the procedure of arbitral proceedings.

The first and probably the greatest of these difficulties is the strong prejudice prevailing among governments against varying a practice which has been confirmed by long established usage. Governments have found it easier in the course of negotiations to adopt language and follow forms, which have been previously used. Diplomacy, like one of the forces of nature, chooses as far as possible the line of least resistance; novelty is viewed with distrust; to travel in the old rut seems preferable to opening a new road; it is much easier to point out that an old way was found satisfactory than it is to convince by argument that a new way is better. This persistency of antiquated methods in the field of international intercourse will have to be overcome before any radical revision can be made in the present method of procedure. To attempt it when two governments are seeking to reach an agreement to arbitrate a particular case would seem to be futile. The subject of procedure must be considered in the abstract, when no controversy is under consideration to bias the judgment of the parties.

Another obstacle to a revision of procedure is the fear, which a government is likely to have, that, if it should become the complainant in an arbitration, it would lose certain advantages by being compelled to submit its case before the other party is called upon to do so. There seem to be two grounds for this fear. First, it is assumed, and with a show of reason, that a party which becomes the complainant by seeking to change existing conditions, would be charged with the burden of making out a *prima facie* case in favor of such change. Second, it is supposed that the defendant government would occupy a better position by being fully apprised of the complainant's claims before disclosing its own.

Whatever may be implied by the simultaneous delivery of two cases, the fact remains that one party is seeking to change the *status quo*, and, though the parties are technically and theoretically on the same footing as to the burden of proof and argument, a tribunal, acting with judicial intent, will certainly not decree a change unless the preponderance of evidence and the stronger legal position favors it. Facts and law being equal, if such a thing were possible, the decision would not change conditions. Thus the burden falls upon the *de facto* complainant under the present procedure as surely as it would in case of revision.

As to the second objection, it may be said that an international controversy involving national interests is, with hardly an exception, the subject of a long diplomatic correspondence before it is submitted to arbitration. Substantially every pertinent fact and every legal rule applicable to it have been advanced and discussed. A party would, therefore, suffer no injury by taking the initiative and presenting its case, nor would the other party derive any special benefit from such a course.

It is of course possible that there might arise a dispute as to which party was the complainant and which the defendant. In the majority of cases the character of the litigants would be so obvious that it would not be the subject of controversy, but in some cases a not unreasonable difference might arise on this subject. A method to settle such a question would have to be devised and enter into the revised method of procedure. Doubtless a commission empowered to review brief statements of the case by the respective parties would remove the difficulty. However, a review of former arbitrations will show how remote would seem to be the need of such a course.

The two principal obstacles to a revised method of procedure, namely, the tenacious adherence to old forms and usages, and the unwillingness of a party to begin the proceedings, having been removed, there ought to be little difficulty in securing a procedure similar to that used in national courts, which experience has proven to be efficient for the ends of justice.

The oral arguments would naturally follow the general plan of the procedure as to pleadings, while the printed arguments would become, as they doubtless should be now, briefs supplementary to the oral arguments rather than the arguments in chief, a practice materially detracting from the value of the oral presentation.

A revision of arbitral procedure as radical as that discussed would also affect the form of submission of a controversy to a tribunal of arbitration, and doubtless require a change in the present method. The customary way in treaties and special agreements making such submission has been to present the dispute in a series of questions, which the tribunal is called upon to answer categorically. While the normal way under the revised procedure would be to embody the claims of the respective parties in the demands for relief contained in the pleadings, such a course would give either party the power to require a judicial decision upon any question which it might see fit to raise, and would necessarily confer upon an international tribunal a general and almost unlimited jurisdiction. Governments are not yet prepared to clothe arbitral courts with so extensive powers. It is, therefore, necessary to restrict their jurisdictions by exact specifications of the points, which they are to consider and decide. To bring such limited submission into harmony with the idea of a complainant and defendant, it would be only necessary to have it consist of a set of declarations embodying the claims as to fact, law, and relief which the complaining government seeks to have judicially established, and, if the nature of the case requires it, there could be a set of counter-declarations on the part of the defending government. The declarations and counter-declarations forming a part of the treaty or special agreement would be the subject of negotiation and dependent upon agreement between the parties. This method of submission, though it is unusual, has been in exceptional cases adopted under the present arbitral procedure. While it preserves the relations of the parties as complainant and defendant, it would as effectively limit the jurisdiction of the arbitrators as is done by the common practice under the old method.

The propriety of urging a change in the procedure of international courts of arbitration so that it will eliminate the peculiarly objectionable features of the present method and give the proceedings a more judicial character, and the possibility of securing such a revision, are subjects which would seem to invite careful thought and consideration at the present time when another great Hague conference will so soon be called upon to re-examine the principle and practice of international arbitration. The questions are: Should a new mode of procedure be presented for the consideration of the world in conference assembled? And, if so, what should be that procedure?

It is my personal judgment, based upon more or less practical experience of the present method, that a revision on some such lines as those suggested would remove the chief objections of the procedure now followed, that it would stamp more deeply upon arbitration the character of a judicial proceeding, and that it would bring the practice before international courts into more complete harmony with the present conception of the scope and purpose of international arbitration.

The CHAIRMAN. Dr. Trueblood.

Dr. TRUEBLOOD. I should like to emphasize two or three things only which have been brought out or suggested in the interesting and comprehensive paper read by Dr. Tryon.

All the peacemakers of the world are agreed, I think, that a permanent international court of justice is one of the great ends to which all our efforts are tending, and for which we are all working. As long ago as 1840, or, in fact, some time in the thirties, the American Peace Society offered a prize of one thousand dollars for the best essay on a Congress and Court of Nations. That offer brought out the now famous essay of William Ladd, and, if I may quote the opinion of Dr. Scott, he said about all that is worth saying on the subject of an international court. That was sixty years ago.

The pacifists of this country and of all countries have always kept steadily in view that the aim of the peace movement—of course leaving out of view its final aim, the abolition of war and the establishment of permanent international peace—is to get a permanent international court of justice established. No one need waste time, therefore, in pleading for such a court any more. Not only all the pacifists, but also a good many people who are not professedly pacifists, are agreed as to that.

When it comes to the question of the time when we shall get this international court of justice and the methods by which it shall be established, there immediately appear differences of views, differences which are interesting, and which we ought all to consider, with due respect for each other.

I, for one, do not believe that we have yet got beyond the necessity of the present Permanent Court of Arbitration established at The Hague in 1899. There are several reasons why this court of arbitra-

tion is at the present time better adapted and more certain to secure proper adjustment of disputes among the nations than a permanent court of justice would be. The nations do not yet trust each other; there is not that sort of confidence which a court of justice would demand. The existence of the court would help to create this confidence, but you must have some of it before you get the court. If you had a court of justice set up today, it is more than likely that a great many of the controversies that arise among the nations would be referred to a tribunal chosen out of the present board of arbitrators established by the Hague Conferences of 1899 and 1907. It will be a good many years, probably, before we shall see the end of the need of the present arbitration court, in steering us through the suspicions and jealousies and hostilities coming to us from the past among the nations. So I hope our friends who are so deeply interested in the creation of an international court of justice, as I also am, will not say too much against the present Court of Arbitration.

You, of course, all know what was done at the Second Hague Conference. That has been brought out in the addresses which have been given. A convention to create a permanent court of justice among the nations, presented by the United States delegation, was approved without a dissenting vote among the delegations, and the only reason we have not that court is that the delegates could not agree upon the method of selecting the judges. Although five years have elapsed since this matter was unanimously approved in principle, there has been no progress toward the inauguration of the court.

What it seems to me all of us in the American Society of International Law and in all the peace societies ought at the present time to do is to turn our attention very largely and earnestly to the question of how we shall get this court into operation; how we shall get the judges chosen. That is the great question now before us. It is a greater question than that of procedure before the court. All these questions should be considered, but we ought to turn our attention largely to the methods of getting the court speedily into operation, as it will have to go through its infancy, and youth, and it will be a long time before it can supplant all the other institutions which are now used.

I quite agree with the sentiment expressed last year at the Mohonk Conference by a distinguished member of the Philadelphia bar, that the members of this court ought not to be appointed by the nations

represented at The Hague—there were forty-four nations—and that they ought not to represent the nations of the world as such at all. I am firmly convinced that that principle is sound, that in whatever way they may be appointed, they ought not to be chosen by the nations as such. Our United States Supreme Court judges are not appointed by the States, but by the President, the executive head of the nation. I do not think the supposed analogy between our Supreme Court and a court of international justice quite holds. Our States are all constituent parts of the Union. They are not independent and sovereign in the same sense that the nations that are represented at the Hague Conference are. Yet, as to the method of appointing the judges, I think we can safely follow the lesson of our own Supreme Court. Two or three methods have been suggested. I have not lost the hope that a member of the court for each of the nations may be appointed, and that a method may be found of using so large a court successfully. If I remember rightly, the Supreme Court of the State of New York has some seventy-five or seventy-six judges. If you should select a representative from each of the nations for the international court, might not the court be divided into sections—say, five or six—and each of these sections given jurisdiction in certain classes of cases, one to have charge of all commercial cases; another to have charge of the rights of citizens of countries residing in other countries, and so on? It would be easy to divide up a court of forty-five or forty-six members in this way. I do not think the matter of expense would occasion any difficulty. The State of New York does not complain of keeping in constant employment seventy-five or seventy-six judges. I suggest this for careful consideration by those who are working out the plan by which such a court may be established in the near future.

Then, as to the appointing of the judges, whether there be forty-five or fifteen or seven or nine, as suggested this morning, in some form, if not directly, all of the nations ought to have a part in the selection. The President of the Hague Conference acting in his representative capacity, might be asked to name the judges. I doubt if that would be satisfactory, however, at the present time. A committee of seven, nine or fifteen might be created at the next Hague Conference, whose duty it should be to select the judges, and then present their names to the general conference for approval. It seems to me it is possible in some such way as this either to have a court of forty-five judges, divided into sections, each section to have charge of a

certain class of cases, and these judges to be selected by some representative commission of the Hague Conference, or to have a court of a smaller number of judges selected in the same way, thus avoiding national prejudices and national suspicion in the creation of the court at the very beginning.

One word more. I rejoiced as much as any one else in the creation of the Prize Court at the Second Hague Conference. It has carried the principle of judicial settlement into a very important field, but the more I think of it the more I doubt whether you will ever be able to create the international court of justice through the Prize Court. The Prize Court will have no existence, except in form, unless a war is on between two nations, and the number of times it will be called on to act perhaps will be very few. Many of us are hoping it will never be called on to act at all. Between the United States and Great Britain it is almost certain that it will never be called upon. In three years from now we shall be celebrating one hundred years of peace between Great Britain and the United States. In three years Norway and Sweden will be celebrating one hundred years of peace between those countries, and in 1915 it will also be a hundred years since Great Britain and France had a tilt at arms. As between Great Britain and Germany it has been longer than that since they were at war, and I think it will be longer than that, in spite of the present strain, before they will have another war. Many nations will never call the Prize Court into service at all.

When mention is made of a distinction between civilized and uncivilized nations, I have tried sometimes to draw the line and put the civilized nations on one side and the uncivilized on the other, but I have never succeeded in making any satisfactory division. Every state should be represented in the international court of justice. They are all, or nearly all, worthy to be classed as civilized states. On the whole, therefore, it is not well to push the matter of a permanent international court of justice through the Court of Prize. If the Prize Court, which was accepted at The Hague, is put into operation, it will probably deal with cases only between a few of the great nations—the nations which now go to war. It is not the uncivilized or the small nations which today go to war and are arming for it, but the so-called great civilized nations. If you were to make a regular international court of justice out of the Prize Court, then few nations would go into it. So I think that we peacemakers, international lawyers, and stu-

dents of these problems, ought to give our attention very seriously to the question of how to get the court of justice, approved in principle at the Second Hague Conference, into actual operation. It will take us some time to get it into operation, of course. In the eleven years since it was established the present court of arbitration has only had some nine cases before it, and I doubt if in the next ten or twelve years it will have as many more. When your court of justice is created it will take a long time to get it thoroughly into operation. Let us therefore devote our energies to securing the appointment of the judges and getting the court started.

The CHAIRMAN. I take great pleasure in yielding the chair to one of our most distinguished vice-presidents, Judge George Gray, presiding judge of the United States Circuit Court of Appeals for the Third Circuit, and I do so all the more readily, if your honor will permit me to say a few words upon the pending paper.

[Judge Gray took the chair, and Mr. Wheeler was recognized.]

Mr. EVERETT P. WHEELER. My object in preparing some observations for presentation to this meeting is to point out how I think it might be easier to bring cases before the Hague Tribunal.

ADDRESS OF EVERETT P. WHEELER, OF NEW YORK,
on
A PERMANENT COURT OF INTERNATIONAL JUSTICE.

In dealing with this subject, it is important to bear in mind that the mere enactment of any legal proposition, however wise, is of itself insufficient. As Professor Pound of Harvard has recently pointed out, one of the most important points in the study of the problem of jurisprudence is to consider "the means of making legal rules effective. This has been neglected almost entirely in the past. We have studied the making of law sedulously. It seems to have been assumed that when made, law will enforce itself."

When the first Hague convention was adopted, there were many diplomats who doubted and were of the opinion that it was no more than a pious wish which would never be made effective. We owe it to President Roosevelt that when the controversy arose between Mexico